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Supreme Court of the United States

OCTOBER TERM, 1948.

No. 461

ANIBAL MONAGAS-DE LA ROSA, *et al.*,
Petitioners,

vs.

NEFTALI VIDAL-GARRASTAZU,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The respondent herein respectfully submits that there is no reason whereby this Honorable Court should exercise its discretion in granting the writ of certiorari prayed for by the Petitioners herein, because in the present case:

(a) There is no Federal question involved. (Rule 38 (5)a)

(b) There is no conflict between the decision of the Circuit Court of Appeals and applicable local decisions in the application of the doctrine of *res judicata*, the only question of local law involved in this case, (Rule 38 (5)b), and

(c) The decision of the Supreme Court of Puerto Rico confirmed by the United States Court of Appeals for the First Circuit, is clearly correct.

Opinions Below.

The opinion of the Supreme Court of Puerto Rico is reported in *Vidal* v. *Monagas,* 66 D. P. R. 622, (Spanish Edition) and its English translation is in the printed record (R-477-493).

The opinion of the United States Court of Appeals for the First Circuit is reported in *Monagas* v. *Vidal,* 170 F. (2d) 99.

Jurisdiction.

The jurisdiction of this Honorable Court has been invoked under Section 1254 of the new Title 28 of the United States Code "Judiciary and Judicial Procedure."

Statement of the Case.

As the Statement of the Case made in the Petition for Certiorari is inaccurate and various important facts have been omitted, we respectfully submit that a correct summary appears on pages 100 to 103 of the Circuit Court opinion. A statement of all the facts in chronological order appears on pages 2 to 10 of the "APPENDIX" (*infra*).

Question Presented.

The only question presented is whether the Supreme Court of Puerto Rico correctly applied, in the present case, the local Puerto Rican theory of *res judicata,* and we respectfully submit that irrespective of the importance of the question from the *local* point of view, there is no *national* public interest which requires this Honorable Court to grant the writ prayed for. *Magnum Import Co.* v. *Coty,*

262 U. S. 159; 67 L. Ed. 922; *Ruhlin* v. *N. Y. Life Ins. Co.*, 304 U. S. 202; 82 L. Ed. 1290.

Errors Assigned in Petition.

"I.—The affirmatory judgment of the Court of Appeals, in not accepting as *res judicata* the former judgment in suit No. *10416*, is clearly in conflict with recognized existing *local law* and with applicable insular and federal precedents.

II.—The Court of Appeals' failure to uphold another prior judgment in case No. *783*, as *res judicata* in the instant litigation, is also plainly inconsistent with prevailing statutory and decisional *local law*, and the apposite federal precedents.

III.—In failing to hold that Juan A. Monagas, petitioners' ancestor, *had acquired title by adverse possession*, as held between the same parties in earlier case No. *783*, the judgment under review is manifestly inconsistent with deeply rooted principles and the well-settled *local law*."

ARGUMENT.

A. NO FEDERAL QUESTION INVOLVED:

From a mere glance at the assignment of errors it is evident that in this case there is no federal question involved. (Rule 38(5)a).

B. NO CONFLICT WITH DECISION OF ANOTHER CIRCUIT COURT:

Nowhere in the Petition for Certiorari or in the Brief is there the slightest contention that the decision rendered by the Circuit Court in the present case is in conflict with

a decision of another Circuit Court on the same matter (Rule 38(5)b).

C. NO CONFLICT WITH APPLICABLE LOCAL DECISIONS:

In the Petition for Certiorari and Brief, a great effort is made by the Petitioners to accommodate their assigned errors and arguments under the second reason specified in Rule 38(5)b, to wit:

> "b.—Where a circuit court of appeals . . . has decided an important decision of *local law* in a way probably in conflict with applicable local decisions . . ."

In order to do so, the Petitioners established the false premise that the decision of the Circuit Court in the present case is in conflict with local decisions. Respondent respectfully submits that in confirming the judgment of the local Supreme Court, the Circuit Court, in the present case, decided the question of local law *in accordance with* the local decision.

In this respect and for the purpose of argument only, let us concede that the local Supreme Court, in its decision in the present case, went as far as to impliedly reverse itself in the application of the theory of *res judicata*. It is our contention that the local Supreme Court had a perfect right to reverse itself in the interpretation of local law, especially in a case like the present one, where through the application of the theory of *res judicata* the Petitioners have been seeking protection for their fraudulent scheme to eliminate Respondent, a defenseless minor, first, as co-partner of the partnership "Vidal & Monagas", and later, as joint co-owner of the "Belvedere Farm".

Special attention is called to the fact that *neither the judgment in Case No. 10416 nor that in Case No. 783 was entered after trial on the merits;* the first being a void judgment consented to by Respondent's mother while he was a minor, through misrepresentation and fraud;[1] and without the proper Court authority;[2] and the second a judgment on demurrer, based on lack of sufficient facts to constitute a cause of action.[3] In so doing, what was done by the local Supreme Court was to apply the doctrine of *res judicata,* as a rule of judicial administration, to the particular situation disclosed in the conclusions of facts, as justice and sound application of the policy behind the doctrine required.[4]

D. LOCAL SUPREME COURT'S DECISION, CONFIRMED BY THE CIRCUIT COURT, IS CLEARLY CORRECT.

1. The former judgment in Case No. 10416 was not *res judicata* in the present case.

Case No. 10416 was a declaratory judgment to establish two erroneous legal conclusions, to wit:

(a) That the partnership "MONAGAS & VIDAL" was dissolved because of the execution sale in former Case No. 6889, when in accordance with local law, this was no ground for the dissolution of a partnership; and

(b) That the Petitioners' ancestor acquired the one-third interest in the Belvedere Estate belonging to Respondent's father, through the execution sale in said case, when

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[1] *Vidal* vs. *Monagas,* 66 D. P. R. 622 at 627 (R-478 bot.). *Monagas* vs. *Vidal,* 170 F. 2d 99 at 101 bot.

[2] *Vidal* vs. *Monagas,* 66 D. P. R. 622 at 635 (R-487 mid.). *Monagas* vs. *Vidal,* 170 F. 2d 99 at 104 bot.

[3] R-350. Judgment in Case No. 783.

[4] Restatement of Law, Judgments. Sec. 70.

as a matter of fact, at the time of the sale the "Belvedere Farm" belonged to the partnership "Vidal & Monagas" (a separate legal entity) and Respondent's father did not have any interest in said real estate. (See APPENDIX P. 16-18:—*"The Execution of Judgment in Case No. 6889 was Academic"* and P. 19:—*"The Causes of Actions were Different"*.)

Irrespective off the fact that it is legally impossible to change the law or its effect through a consent declaratory judgment, the judgment entered in Case No. 10416 was clearly void, in accordance with well-settled local law, because valuable rights of the Respondent, while a minor, were alienated and surrendered without evidence of the necessity and utillity to the minor of the alienation.[5]

For a detailed discussion of this point see APPENDIX, P. 20-25 "B.—*The Judgment in Case No. 10416 was Clearly Void.*"

2. The former judgment in Case No. 783 was not *res judicata* in the present case.

The action in Case No. 783 was for the recovery (revendication) of a share in the "Belvedere Farm", which is an *action in rem.* The defendants therein (Petitioners' ancestor and other co-owners) demurred to the complaint for failure to state a cause of action, misjoinder, nonjoinder, prescription and *res judicata* (R. 305-314). The District Court sustained the demurrer for failure to state a cause of action and for prescription and entered judgment dismissing the complaint on the ground that it was not susceptible of amendment, (R-349, 350), therefore, the judgment was not a judgment after trial, on the merits of the case.

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[5] *Vidal* vs. *Monagas*, 66 D. P. R. 622 at 635. (R-487 mid.).

A judgment on demurrer may be or may not be on the merits. It is not on the merits when rendered because of an omission of an essential allegation in the complaint,[6] as happened in Case No. 783, where the District Court held the omission to be that the plaintiff did not offer to restore to the defendant Juan A. Monagas, the sum he paid to Beauchamp for a supposedly one-third interest in the "Belvedere Farm" (R-355; 486) and furthermore no facts were alleged in the complaint to justify the erroneous conclusion that Monagas had obtained title by adverse possession during ten years with just title.[7]

For a more complete and detailed argument on this point see APPENDIX p. 25-33: "POINT III OF APPELLEE'S BRIEF BEFORE CIRCUIT COURT."

3. Circuit Court did not err in failing to hold that Petitioners' Ancestor acquired title by adverse possession.

From the assignment of this third and last error it is evident that the Petitioners have forgotten that the present case is exclusively an *action in personam* for the liquidation of a dissolved partnership, and that no issue was presented or could have been presented as to the prescription of the right to recover an interest in real estate.

As a matter of fact in no former case was this question ever litigated and determined. On the contrary, in Case No. 783 this question was raised on demurrer, but nowhere in the complaint is there any allegation from which the District Court could reach the conclusion that Petitioners' ancestor acquired title by prescription.

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[6] Restatement of Law, Judgments 198 Sec. 50. *Durant* vs. *Essex Co.*, 74 U. S. 107; 109. *Insular Board of Election* vs. *District Court*, 63 P. R. R. 786; 798. *Laloma* vs. *Fernández*, 61 P. R. R. 550.

[7] See comments on this point in Opinion of local Supreme Court R-481 f. n. 3 and 4.

In accordance with Section 1857 of the Civil Code of 1930 in order to acquire title by adverse possession during ten years, the existence of "good faith and proper title is essential"; and from the allegations in the complaint in Case No. 783 (R-285, 304) it clearly appears that the title acquired by Petitioners' ancestor was not only a void title but also a fraudulent and academic title; transferring no right whatsoever in the "Belvedere Farm" which was exclusively owned by a third person; and that the recording of the same was so tainted with fraud that not only the local Supreme Court,[8] but also the Circuit Court[9] in their respective opinions made the following comment:

> "Monagas then succeeded, *we cannot understand how,* in recording the one-third interest in the Belvedere Estate in his name, despite the fact that the whole property was already recorded in the name of the partnership of Monagas & Vidal." (Italics supplied).

Furthermore, it was alleged in the complaint in Case No. 783 that Petitioners' ancestor through misrepresentation and fraud obtained the consent of Respondent's mother, while he was a minor, to the consent declaratory judgment in Case No. 10416 (R-298), in an attempt to perfect the recording of the title.

In this respect the local Supreme Court in its opinion (R-479 mid.) made the following comment:

> "Vidal's widow consented in writing to judgment for plaintiffs. As she now explains (without being contradicted by Monagas) she signed the written consent at the request of Juan Monagas, while confined in a clinic, *and relying on his false representa-*

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[8] *Vidal* vs. *Monagas,* Opinion—R-478 bot.
[9] *Monagas* vs. *Vidal,* 170 F. 2d 99 at 101 bot.

tion regarding the contents and effect of the document." (Italics supplied).

And the Circuit Court in its opinion (P-107) commenting on the above transcribed statement of the local Supreme Court, stated as follows:

> "But *the statement of the Supreme Court of Puerto Rico was not erroneously made.* The record shows that the plaintiff's mother testified without contradiction at the trial of the instant case in the insular District Court that in May 1924, when she was confined in a clinic recovering from an operation, Juan A. Monagas came to see her and after general conversation, she said, *'we agreed that he would prepare a document whereby it would be provided that my son would receive his share when he became of legal age in the same way as the children of José Arturo Monagas.'* " (Italics supplied).

Under all these circumstances, it is evident that Petitioners' ancestor did not obtain the just title which is required by the local Civil Code and that his bad faith is obvious.

Conclusion.

The judgments below are correct. The questions really involved are only of local law. There is no question of national public interest to be reviewed by this Honorable Court and the petition for writ of certiorari should be dismissed.

Respectfully submitted,

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By: R. CASTRO FERNANDEZ

Copy of this brief was served by registered mail on José A. Poventud, Esq., Box 266, Ponce, Puerto Rico, as attorney for the Petitioners, this 30th day of December 1948.

R. CASTRO FERNANDEZ,
Attorney for Respondent.

APPENDIX.

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TABLE OF CASES.

OTHER AUTHORITIES.

STATUTES.

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1947.

No. 4265.

JUAN A. MONAGAS ET AL.,
Appellants,

v.

NEFTALI VIDAL GARRASTAZU,
Appellee.

BRIEF FOR THE APPELLEE.

PRELIMINARY.

This case involves the application of the rules of *res judicata* and of collateral estoppel by judgment.

OPINION BELOW.

The opinion of the Supreme Court of Puerto Rico is reported in *Vidal* v. *Monagas,* 66 D.P.R. 622, (Spanish Advance Sheet No. 5) and its English translation is in the printed record. (R. 477-493.)

JURISDICTION.

The jurisdiction of the Honorable Court has been invoked under Section 128 (a) (4) of the Judicial Code as amended (28 U.S.C.A. 255 (a) (4)). This is a civil action wherein the value in controversy, exclusive of interest and costs, exceeds $5,000, but no Federal question is involved, inasmuch as those raised in the Statement of Points are not in fact involved, as will be shown in the discussion of said points.

STATEMENT OF THE CASE.

As the Statement of the Case made in Appellant's brief and the Statement on Appeal filed herein do not give an exact picture of the material facts involved in the present case and in the previous cases, we consider that such statement, in chronological order, will be very helpful, in order to supplement the statement made by the local Supreme Court in its opinion. (R. 478-483.)

STATEMENT OF IMPORTANT EVENTS IN CHRONOLOGICAL ORDER.

1. Feb. 9, 1905: On this date the civil agricultural partnership "Monagas & Vidal" was organized (1) (R. 218) by Jose A. Monagas, Juan A. Monagas and Ramiro Vidal, for the term of ten years, which was later extended to June 30, 1924 (R. 227); each partner with an equal interest in the partnership and in payment of their share in the capital of the partnership each partner transferred and assigned to the partnership: (a) the 1/8th share which they owned in a farm known as "Belvedere Farm"; (b) their 1/3 interest in the lease to the remaining 5/8th share in said farm, and (c) their 1/3 interest in the sugar cane plantation cultivated in said farm. The deed of constitution of said partnership expressly provides that the partnership was to continue until the expiration of its term in the event of the death of any partner (R. 222).

2. March 18, 1907: The partnership of "Monagas & Vidal" acquired by purchase the remaining 5/8th share in the "Belvedere Farm". (R. 235, 239.)

3. April 30, 1915: The partner Jose A. Monagas died (R. 76) leaving as his sole and universal heirs his children, Margarita, Jose, Carmen, Gladys and Iris Monagas-Nadal, his

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(1) A partnership is a legal entity in Puerto Rico. *People* v. *Russell & Co.*, 288 U.S. 476; 482; 77 L. Ed. 903; 908.

widow Carmen Nadal-Cabassa and his grandchildren Jose, Carmen, Gladys and Iris Monagas-Vidal, (Defendants but not Appellants herein).

4. September 27, 1918: Case No. 6889—*Mora* v. *Ramiro Vidal* (Action of Debt): On this date a complaint was filed by Jose Mora against Ramiro Vidal to recover the sum of $800 principal amount of a note executed by defendant, Ramiro Vidal, to the order of Vincente Pagan which was endorsed by him to the plaintiff, plus interest and costs. (R. 430.)

5. February 14, 1919: Default judgment was entered against Ramiro Vidal in Case No. 6889.

6. August 17, 1921: The partner Ramiro Vidal died, (R. 176) leaving as sole and universal heir his son Neftali Vidal (Plaintiff-Appellee herein) and his widow Juana Garrastazu (One of the defendants but not appellant herein).

7. March 27, 1923: In Case No. 6889—*Mora* v. *Vidal:* Ramon Beauchamp appeared and requested subrogation in place and right of plaintiff alleging that Mora assigned to him the judgment entered in said case. (R. 437). In the Motion for Subrogation no allegation is made of Ramiro Vidal's death nor was the motion served on his attorney nor on his heir, and the District Court entered the requested order of subrogation without a hearing. (R. 438.)

8. April 2, 1923: In Case No. 6889—*Mora* v. *Vidal:* R. Beauchamp, as substituted plaintiff, filed motion alleging that the defendant Ramiro Vidal died and requested the substitution of his son Neftali Vidal and of his widow Juana Garrastazu, as party defendant, and the District Court entered the requested order without notice and without a hearing. (R. 441.)

9. April 9, 1923: In Case No. 6889—*Mora* v. *Vidal:* Beauchamp obtained order of execution and the Marshall of the District Court of Mayaguez levied and attached "every

right, title and interest which defendants may have" in the "Belvedere Farm". (R. 445). (²)

10. May 17, 1923: In Case No. 6889—*Mora* v. *Vidal:* Marshal sold to Beauchamp for $900 'every right, title and interest that said defendants had in the aforesaid property", to wit, in "Belvedere Farm". (R. 499.)

11. May 18, 1923: Beauchamp purported to sell to Juan A. Monagas (Appellant herein) the ⅓ interest he acquired, the day before, at public sale on execution of the judgment in Case No. 6889.

12. March 19, 1924: Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal* (Declaratory Judgment): On this date a complaint was filed by Juan A. Monagas on his own behalf and as tutor of his minor children against the heirs of Ramiro Vidal, to wit: Neftali Vidal, minor son and Juana Garrastazu, his widow, alleging in sustance: (1) the constitution of the partnership "Monagas & Vidal"; (2) the extension of the partnership's term to June 30, 1924; (3) the purchase by the partnership of the remaining ⅝th interest in Belvedere Farm; (4) the recording of the entire Belvedere Farm in the name of the partnership; (5) the death of Jose A. Monagas and the names of his heirs; (6) the death of Ramiro Vidal and the judicial declaration of the defendant Neftali Vidal, (then a minor) and of the defendant Juana Garrastazu as his only heirs; (7) the fact that the partnership continued in operation and existence in spite of the death of two of the three partners; (8) the attachment and sale to Ramon Beauchamp on execution of the judgment in Case No. 6889 of the right and share (condominio) that the heirs of Ramiro Vidal had in the Belvedere Farm and the

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(²) Belvedere Farm was on the date of the attachment exclusively owned by the partnership and remained so until June 30, 1924 date of dissolution by the expiration of the partnership's term.

erroneous conclusion (3) that by virtue of said sale the heirs of Ramiro Vidal remained without any share or right in the partnership; (9) the mortgage lien of $20,000 on the Belvedere Farm; (10) the request on and consent of defendant Juana Garrastazu, mother of the minor Neftali Vidal, to the execution of the corresponding deed of dissolution of the partnership and her impediment to do so, as mother of said minor, without court's authority. (R. 453-457). In said complaint the plaintiffs pray for judgment decreeing:

(1) That the partnership had been dissolved because of the sale at public auction of Ramiro Vidal's share in the partnership capital;

(2) That the plaintiff Juan A. Monagas was the owner of 1/3 interest in Belvedere Farm as partner of the partnership "Monagas & Vidal"; the children of Jose A. Monagas were the owners of the 1/3 interest the deceased Jose A. Monagas had as partner of the said partnership and that the remaining 1/3 interest is now owned by the plaintiff Jose A. Monagas by purchase from R. Beauchamp.

(3) That the Belvedere Farm be recorded in the Registry of Property in the name of the plaintiffs in the above proportion.

(4) That the plaintiffs acquired said shares with the mortgage lien, the defendants being relieved from the payment of said debt. (R. 457, 458.)

13. May 16, 1924: In case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal:* The defendant Juana Garrastazu in her own right and as mother with *patria potestas* over her minor son Neftali Vidal appeared and consented in writing to the entry of the judgment prayed for, stating, in the verification of said motion, that the consented judgment

(3) Erroneous conclusion because of the fact that in no occasion the rights, title and interest of Vidal or of his heirs in the partnership had ever been attached.

was beneficial to the interest of her minor son inasmuch as they were relieved from paying the liens encumbering the Belvedere Farm. (R. 460, 461.)

14. May 17, 1924: In Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal:* District Court entered judgment in accordance with the prayer of the complaint without either party presenting any evidence as to the necessity and convenience to the minor defendant to consent said judgment nor any other evidence whatsoever. (R. 462.)

15. June 30, 1924: "Monagas & Vidal" partnership term expired (R. 227) thus causing the dissolution of the partnership and the vesting of the title of the properties of the partnership on the partners, jointly and undividedly (4).

16. February 9, 1938: Case No. 783—*Neftali Vidal* v. *Juan A. Monagas et al.* (Revendicatory Action): On this date Neftali Vidal, then of full age, filed and amended complaint (5) against Juan A. Monagas, the heirs of Rosario de la Rosa (deceased) wife of Juan A. Monagas), the heirs of Jose A. Monagas and the heirs of Ramon Beauchamp for the recovery (revendication) of the "1/3 interest in the Belvedere Farm" he inherited from his father Ramiro Vidal (6), alleging in substance, (R. 285-303): who are the parties plaintiff and defendants; the filing of Case No. 6889—*Mora* v. *Vidal* (Action of Debt); the default judgment in Case 6889; the conspiracy between Juan A. Monagas and Ramon Beauchamp to fraudulently appropriate the share of Ra-

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(4) *Chardon* v. *Laffaye*, 43 P.R.R. 623; *Chardon* v. *Laffaye*, 46 P.R.R. 889; *Miramar Realty Co.* v. *Registrar*, 44 P.R.R. 808; 811.

(5) The date on which the original complaint was filed does not appear in the record.

(6) It is important to note that Neftali Vidal, plaintiff in said case, did not inherit from his father, Ramiro Vidal, any right, title or interest in the "Belvedere Farm", which at the time of his death (Aug. 17, 1921) was exclusively owned by the partnership. It was not until June 30, 1924, (date when the partnership's term expired) that Neftali acquired his interest in the "Belvedere Farm".

miro Vidal in the "Belvedere Farm"; the subrogation and substitution of party plaintiff and party defendant in Case 6889; the lack of notice thereof to the defendants in said case; the issuance of the order of execution in said case; the sale at public auction to Beauchamp of "every right, title and interest the defendants had in the Belvedere Estate"; the sale by Beauchamp to Juan A. Monagas of the acquired rights, title and interest in said farm; the constitution of the partnership "Monagas & Vidal"; the extension of the partnership term to June 30, 1924; the form in which the partnership acquired title and became owner of the entire "Belvedere Farm"; the death of Jose A. Monagas and the names of his heirs; the filing of Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal* (Declaratory Judgment); the entering of the judgment and its execution; the fraud in obtaining Mrs. Garrastazu's consent to entry of the judgment prayed for, while seriously ill and under promise to return to her minor son Neftali Vidal when he should reach his majority of age, all the property belonging to his father; Monagas' refusal to deliver the same to Neftali Vidal when he reached his majority; Juan A. Monagas' illegal appropriation of the total share that Ramiro Vidal held and possessed in the Belvedere Estate and Monagas' appropriation of all the rents, fruits and utitlies produced by the Belvedere Farm; and Neftali's right to the entire ⅓ share his father had in the Belvedere Farm subject to the usufruct belonging to his mother, because the same was the private property of his father. After alleging legal grounds to support plaintiff's contention that the sale at public auction, the deed executed by the Marshal, the deed of purchase by Monagas from Beauchamp and the recording thereof were null and void, the plaintiff prayed for judgment as follows (R. 303):

(a) Declaring null and void and ineffective the petition for subrogation and substitution; the order of execution; the writ of execution; the notice of attachment; the sale at public auction; the Marshal's deed of sale in Case No. 6889 —*Mora* v. *Vidal* (Action of Debt), and the deed of sale from Beauchamp to Juan A. Monagas.

(b) Declaring null and void the judgment rendered in Case No. 10416—*Monagas* v. *Heirs of Ramiro Vidal* (Declaratory Judgment); its execution and the Marshal's deed in compliance with said judgment.

(c) Annulling every entry in the Registry of Property as to the ⅓ interest in Belvedere Estate belonging to Ramiro Vidal.

(d) Ordering defendants to deliver and surrender to plaintiffs the share in the Belvedere Farm which belonged to their predecessor Ramiro Vidal and to deliver to them all the fruits, rents, benefits and utilities produced by the said share in the Belvedere Farm.

(e) Ordering defendants to pay to the plaintiffs the sum of $100,000, value of the ⅓ condominium in the Belvedere Estate plus $64,000 representing the total value of the fruits, rents, etc. produced by the said condominium.

17. March 3, 1941: In Case No. 783—*Vidal* v. *Monagas* (Revendicatory Action): Defendants' demurrer to the complaint for failure to state a cause of action, misjoinder, nonjoinder, prescription and *res judicata.* (R. 305-314.)

18. March 6, 1942: In Case No. 783—*Vidal* v. *Monagas* (Revendicatory Action): District Court sustained demurrer for failure to state a cause of action and for prescription, and entered judgment dismissing the complaint on the ground that the complaint was not susceptible of amendment. (R. 349, 350.)

19. November 16, 1942: Present Case—*Vidal* v. *Monagas* (Liquidation of Partnership): On this date the original complaint was filed before the District Court of Mayaguez, Puerto Rico, which was later amended (R. 75) to allege in substance as follows: (1) the constitution of the partnership "Monagas & Vidal" and the extension of its term to June 30, 1924; (2) the death of the partner Jose A. Monagas and the names of his heirs; (3) the death of the partner Ramiro Vidal, father of the plaintiff-appellee herein, and the name

of his heirs; (4) the death of Rosario de la Rosa, wife of the partner Juan A. Monagas, a defendant and appellant herein, and the names of her heirs; (5) the description of the properties of the partnership at the time that the partnership's term expired; (6) the management of the properties of the partnership by the other partners from the death of Ramiro Vidal, (when plaintiff was 5 years old) to date, without the intervention of the plaintiff or of his mother; (7) the dissolution of the partnership by the expiration of its term on June 30, 1924; the fact that the partnership has never been liquidated; the fact that neither the plaintiff nor his mother received any share of the rents and profits yielded by the properties of the extinguished partnership calculated in $500,000; (8) the ownership of plaintiff of the entire share which belonged to his father; the request on defendants to carry out the liquidation, partition, division and adjudication of the said partnership and of its properties and their refusal to do so.

The prayer of the complaint is for judgment ordering the liquidation of the partnership; the rendering of accounts; the partition, division and adjudication among the plaintiff and defendants of the properties of the partnership and of its rents and profits. (R. 75-79.)

20. January 31, 1945: This Case: On this date the District Court of Mayaguez, Puerto Rico, after trial on the merits, entered judgment ordering the liquidation of the partnership "Monagas & Vidal" on the ground that its term has expired and has not been liquidated, although it owned properties which must be liquidated and partitioned among the partners and/or their successors in interest and providing that if the partners or their successors fail to agree to carry out the liquidation, the Court will appoint a commissioner to do so. (R. 163).

21. November 12, 1946: This Case: On this date the Supreme Court of Puerto Rico entered the judgment appealed from, confirming the judgment of the lower court after modifying the same insofar as to exclude the heirs of Jose A. Monagas from the payment of attorney's fees.

APPELLEE'S POSITION.

I. The Supreme Court of Puerto Rico was right in rejecting the plea of *res judicata* to Case No. 6889.

II. The local Supreme Court was right in holding that the former judgment in Case No. 10416 was not *res judicata* in the present case.

III. The Supreme Court of Puerto Rico was right in rejecting the plea that the judgment in Case No. 783 is *res judicata* in the present case.

IV. The Appellants were not deprived of due process by the finding on Monagas' misrepresentations to Vidal's widow which was predicated on testimony admitted without objection by the trial Court.

V. The Court below correctly held void the proceedings after judgment in Case No. 6889 and the deed of judicial sale to the 1/3 interest in "Belvedere Farm" without the joinder of Beauchamp's heirs as defendants.

VI. The Court below was correct in not holding that co-appellant Juan A. Monagas acquired title by adverse possession to Vidal's share in "Belvedere Farm".

ARGUMENTS.

PRELIMINARY.

It will be helpful if this Honorable Court will keep in mind that a civil partnership such, as "Monagas & Vidal", is in Puerto Rico a juridical person, completely separate and independent of its partners, with most of the characteristics of a corporation, until dissolution. *People* v. *Russell & Co.*, 288 U.S. 476; 482; 77 L. ed. 903, 908.

Point I.

The Supreme Court of Puerto Rico was Right in Rejecting the Plea of Res Judicata as to Case No. 6889.

There is a fundamental distinction between the theory of *res judicata* and the theory of collateral estoppel by judgment and said distinction is that a matter is *res judicata* when in the former suit and in the subsequent suit there is a concurrence of (1) identity of subject matter, (2) identity of parties and (3) identity of causes of action; while the defense of estoppel by judgment is only raised when the causes of action are different (7).

When there is identity of matters, parties and causes of action, through the theory of *res judicata* the judgment on the prior case is conclusive not only as to matters actually litigated and determined but also as to matters, which might have been litigated and determined in the first suit (8).

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(7) *Cromwell* v. *County of Sac.*, 94 U.S. 351; 352; 24 L. Ed. 195.
United States v. *Moser*, 266 U.S. 236.
Tait v. *Western Md. Ry. Co.*, 289 U.S. 620; 623.
Scott, Collateral Estoppel by Judgment, 56 Harvard Law Review 2.
2 Freeman on Judgments (5th Ed.) Sec. 671.
50 C.J.S. 13 Sec. 593.

(8) *Angel* v. *Bullington*, 91 L. Ed. 557.
People v. *Lugo*, 64 P.R.R. 529; 533.
Mestre v. *Michelena*, 30 P. R. R. 142.
Manrique v. *Aguayo*, 37 P.R.R. 314.
Restatement of Law, Judgments, p. 159.

Where, however, the subsequent action between the same parties is based upon a different cause of action the judgment is only conclusive as to matters actually litigated and determined (9).

Under both theories the judgment must be on the merits (10) and the matters litigated and determined must be essential to the judgment. (11).

Bearing in mind these elemental principles of the theories of *res judicata* and estoppel by judgment, clearly adopted not only by our local Supreme Court but also by this Honorable Court, and by the Supreme Court of the United States (12), let us now analyze the judgment in Case No. 6889 in order to determine if the cause in said case is the same as the cause of action in the present case.

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(9) *Mendez* v. *Bowie,* 118 F (2) 435.
State Farm Mutual Auto Ins. Co. v. *Duel,* 324 U.S. 154; 84 L. Ed. 812; 814.
Baltimore S.S. Co. v. *Phillips,* 274 U.S. 317; 71 L. Ed. 1069.
Cromwell v. *Co. of Sac.,* 94 U. S. 351; 24 L. Ed. 195.
Restatement of Law, Judgment 159; 300.

(10) *Melendez* v. *Cividanes,* 64 P.R.R. 4; 11.
Insular Board of Elections v. *District Ct.,* 63 P.R.R. 786; 798.
Restatement of Law, Judgments, 193 Sec. 49.

(11) Restatement of Law of Judgments, 293; 309 Sec. 68.
50 C.J.S. 209; Sec. 723.
50 C.J.S. 213; Sec. 725.

(12) *Angel* v. *Bullington,* 91 L. Ed. 557. Appellants rely strongly on this case as holding that a prior judgment is a bar to subsequent litigation not only as to matters actually litigated and determined, but also as to all matters which could have been litigated and determined. We respectfully submit that the *Angel* case is just a ratification of the correct theory of *res judicata* and not an alteration of the theory of collateral estoppel by judgment, more so when it appears from the opinion (p. 559) that in said case the identity of matters, parties and causes of action was such that the complaint in said case "was a carbon copy of the complaint" in the former case.

A. *The Cause of Action in Case No. 6889 is Different From That in the Present Case.*

1. As appears from paragraph 4 of the foregoing "Statement of Important Events", the cause of action in Case No. 6889 (*Mora* v. *Vidal*) was one of debt, for the recovery of the sum of $800 principal amount of a promissory note executed by the Appellee's father to the order of Vincente Pagan and endorsed by him to Jose Mora, plaintiff therein. The causes of action in the present case being for the liquidation of the dissolved partnership "Monagas & Vidal", it is clear that there is no identity of causes of action and therefore the theory of *res judicata* does not apply.

2. The cause of action in Case No. 6889 being different to that in the present case, the next step is to determine what matters were actually litigated and determined by the judgment in former case, and the answer is: That the indebtedness of Ramiro Vidal, Appellee's father, to the plaintiff Jose Mora as holder of the note, was the only matter determined by the judgment.

It is Appellants' contention that the proceedings in Case No. 6889 were *res judicata* in the present case because, contrary to what the local Supreme Court held, neither the order of substitution of party defendant nor the execution of the judgment in said case, was void (Brief Point I (C) pages 9 to 21); but this is a non-sequitur. What constitutes a bar to the subsequent case is the judgment in the prior case and not the proceedings therein, more so if the challenged proceedings were after judgment ([13]).

B. *The Order of Substitution of Party Defendant in Case No. 6889 was Void.*

1. As appears from paragraph 8 of the Statement of Important Events (*supra*), Beauchamp as substituted plaintiff

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([13]) 50 C.J.S. 35 Sec. 613.
34 C. J. 763 Sec. 1177.

in Case No. 6889 filed a motion alleging the death of Ramiro Vidal, the defendant therein, and requested the substitution of his son Naftali Vidal and his widow Juana Garrastazu as parties defendant, and the District Court entered the requested order without notice and without a hearing.

In accordance with Section 244 of our Code of Civil Procedure, an order of execution cannot be entered in the case of the death of the judgment debtor except when the judgment is for the recovery of real or personal property.

Sec. 244 Code Civil Procedure 1933:

> "Notwithstanding the death of a party after the judgment, execution thereon may be issued, or it may be enforced as follows:
>
> 1. In the case of the death of the judgment creditor, upon the application of his executor, or administrator, or successor in interest.
>
> 2. In the case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property."

Commenting on said Section 244, our local Supreme Court in *Fernandez* v. *Velasquez,* 17 P.R.R. 716; 725, which was a case for the recovery of real estate, held that:

> "When the death of the defendant occurs, the court rendering the judgment should be notified thereof, and a motion should be filed requesting that the execution be levied against the estate of the deceased, giving to said estate such intervention in the proceedings as corresponds to a real interested party."

Therefore, in accordance with Section 244 of our Code of Civil Procedure, the order of execution in Case No. 6889 was void for two reasons: (1) because said case being for the recovery of money and not for the recovery of real or personal property, the Court had no authority to enter it,

and (b) because the heirs of the defendant therein were not notified nor were they given the intervention that due process guarantees to all party in interest ([14]).

2. The local Supreme Court held that the proceedings in Case No. 6889 did not constitute a defense to the plaintiff's claim in that defendant's heirs were not served with notice of their substitution as parties defendant citing *Rosas* v. *Heirs of Bruno*, 41 P.R.R. 143 (R. 488). Appellants in their brief (p. 10) contend that the cited case is wholly different and inapposite because the order of substitution of defendants in said case was entered before judgment.

It is true that in the *Rosas* case the substitution was before judgment, nevertheless, said case is authority for the holding of our local Supreme Court in the established principle, that the heirs of a defendant must have notice and opportunity to be heard before they are substituted as parties defendant. *Fernandez* v. *Velazquez*, 17 P.R.R. 716, 725.

3. The procedure to substitute the heirs is different when the defendant dies before judgment, in which case Sections 43 and 69 of our Code of Civil Procedure apply, than when the defendant dies after judgment, in which case an order of execution can be only issued in the case of recovery of real or personal property, and in said case the procedure is in accordance with Section 244 of our Code of Civil Procedure interpreted in the light of the provisions of Section 69 of the same Code. *Fernandez* v. *Velasquez*, (*supra*).

4. Appellants cite the case of *Ramirez* v. *District Court*, 49 P.R.R. 129, in support of their contention, but as appears from the opinion in said case, the motion for substitution was made and the heirs of the deceased defendant had been

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([14]) *Fernandez* v. *Velazquez*, 17 P.R.R. 716; 725.
Casanova & Co. v. *Court Tax Appeals*, 61 P.R.R. 55; 57.
Mitchell v. *St. Maxent's Lessee*, 71 U.S. 237; 242.
Restatement of Law, Judgment, 36 Sec. 6.

summoned to appear, therefore, in said case the proper procedure was followed in accordance with Sections 43 and 69 of our Code of Civil Procedure.

C. *The Sale on Execution of Judgment in Case No. 6889 was Void.*

The order of execution being void, the execution of the judgment and the sale on execution are necessarily also void and non-existent ([15]) and the plaintiff-appellee herein was under no obligation either to allege nor to prove that said order, execution and sale were void in order to obtain a decree for the liquidation of the partnership.

Lompre v. *Diaz,* 237 U.S. 512; 519:

> "In the light of this conclusion we are of the opinion that the lower court committed no error in overruling the challenge made by the answer to the capacity of the plaintiff to sue in revendication (ejectment) upon the assumption that he was bound first to seek the rescission of the partition proceedings and to obtain an annulment of the order of the judge approving the same, since it is impossible to conceive that the preliminary duty exist to obtain the annulment of that which was already null or to seek to rescind that which never in contemplation of law had any existence whatever."

D. *The Execution of Judgment in Case No. 6889 was Academic.*

1. The order of execution issued in Case No. 6889 did not specify what property was to be attached or levied on in order to collect the judgment (R. 443); therefore, it was at

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([15]) *Mitchell* v. *St. Maxent's Lessee,* 71 U.S. 242 cited in *Fernandez* v. *Velazquez,* 17 P.R.R. 716; 724: Purchasers at a judicial sale are not protected, if the execution on which the sale was made was void. Void process confers no right on the officer to sell and all acts under it are absolute nullities." See also *Casanova & Co.* v. *Court Tax Appeals,* 61 P.R.R. 55; 57.

the request of the plaintiff that the Marshal of the Court attached "every right, title and interest which defendants may have in the Belvedere Estate". (R. 445.)

What was advertised for sale on execution (R. 446) and what was really sold on execution (R. 449) was "every right, title and interest that said defendants had in the aforesaid property", although the defendant at the time of the attachment and at the time of the sale only had an interest in the partnership, because of the fact that the attachment was levied on April 9, 1923 (R. 445) and the sale on execution was made on May 17, 1923 and it was not until June 30, 1924 that the partnership "Monagas & Vidal" was dissolved by expiration of its term (R. 227).

As the partnership "Monagas & Vidal" was at the time of the attachment and of the sale on execution the exclusive owner of the Belvedere Farm, the local Supreme Court was clearly correct in holding that even if the execution of the judgment in said case was not void, it was academic, for what was sold, to wit: the interest of the heirs of Vidal in the Belvedere Estate, did not exist, hence the execution sale even if it was not void, could not and did not grant to Monagas or take from Vidal's heirs any right (R. 488; 489). It was not until June 30, 1924, date on which the partnership term expired that the title to the dissolved partnership property vested in the partners jointly and undividedly ([16]).

2. It is Appellants' contention that Vidal's heirs are estopped from attacking the inefficacy of the execution sale because of the fact that they later (over one year after the execution sale) acquired the undivided interest in the Belvedere Estate and through the theory of implied warranty, said acquisition inured to the benefit of the purchaser at

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([16]) See cases cited in Foot Note 4.

said sale, citing as authority the case of *Veve Diaz* v. *Sanchez*, 57 L. Ed. 201 (Brief 20).

This decision is entirely inapposite because as it appears from said case the appellee Sanchez executed a mortgage wherein he stated that he was the owner of the property mortgaged, when in fact he was the owner of part of said property and later acquired the rest. As the National Supreme Court said: "having received the money on the faith of the statement that he was the owner of the property, he was bound to repay that sum; or, failing that, to perfect the title on which the money had been advanced", therefore the *Veve* case is clearly one of estoppel by deed.

In the present case Vidal's heirs were under no obligation whatsoever to perfect the title to the interest in Belvedere Farm which the Marshall illegally levied and sold on execution, and in no occasion did they make any statement whatsoever through which an estoppel could be raised.

3. It is also Appellants' contention that because the deed of judicial sale was recorded in the Registry of Property, Beauchamp had title to convey to Monagas (B. 18), but this contention is contrary to Section 33 of our Mortgage Law which expressly provides that the recording does not convalidate acts or contracts which are null and void ([17]).

4. In summary, at the time of the attachment and at the time of the sale, Vidal's heirs had no right, title and interest in the Belvedere Farm. They only had an interest in the partnership, interest which we concede could have been, but was not, attached or levied on, and the Marshal having attached and sold an interest which did not exist, the result of said sale was that Beauchamp acquired nothing and therefore, transferred nothing to Monagas.

([17]) *Fajardo Sujar G. Assoc.* v. *Kramer*, 45 P.R.R. 337; 366.
Heirs of Mandes v. *Heirs of Aguero*, 43 P.R.R. 278.
Ayllon v. *Gonzalez*, 28 P.R.R. 61; 69.
Fernandez v. *Velazquez*, 17 P.R.R. 716; 726.

Point II.

The Local Supreme Court was Right in Holding that the Judgment in Case No. 10416 was not Res Judicata in the Present Case.

A. *The Causes of Actions were Different*

Although the local Supreme Court held that the causes of action were the same (R. 487) we respectfully submit that said Court went too far in so holding.

Case No. 10416 was an action for a Declaratory Judgment and its object was to obtain the declaration of two erroneous legal conclusions, to wit:

(a) That the partnership of "Monagas & Vidal" was dissolved because of the sale, on execution in Case No. 6889, of the share in the partnership capital owned by Vidal's heirs: and

(b) That Monagas acquired the 1/3 interest in Belvedere Estate belonging to the heirs of Vidal through the sale on execution of the judgment in Case No. 6889.

The first conclusion is erroneous because in no occasion was the interest of Vidal's heirs in the partnership levied or attached, and furthermore, when the judgment was entered in Case No. 10416, the partnership's term had not expired.

The second conclusion is erroneous because as hereinbefore shown, by the sale on execution in Case No. 6889 no interest in the Belvedere Farm was conveyed and therefore Monagas acquired none.

Under those circumstances, can it be said that the cause of action in Case No. 10416 is identical to the cause of action in the present case? Does not the fact that said case being for the judicial declaration of two erroneous conclusions of law makes the cause of action different from that of the present case? The evidence in support of the allegations in Case No. 10416 would have clearly established the error of the conclusion therein prayed for, and

the fact that the partnership was not then dissolved, while the evidence in the present case clearly established the dissolution of the partnership and the fact that no interest in the partnership was sold on the execution sale in Case No. 6889 ([18]).

The causes of action being different the judgment by confession entered in Case No. 10416 is neither *res judicata* nor an estoppel to the cause of action herein ([19]).

B. *The Judgment in Case No. 10416 was Clearly Void.*

1. The defendant herein, Juana Garrastazu as mother with *patria potestas* over her then minor son, Neftali Vidal (appellee herein) filed a motion consenting to the entry of the judgment prayed for, stating in the verification of said motion that the consent to the judgment is beneficial to the interest of her minor son because he was relieved from the payment of the liens encumbering the "Belvedere Estate". (R. 460, 461.)

On the next day the Court entered judgment without either party presenting any evidence as to the necessity and convenience for the minor to consent to said judgment, nor any other evidence whatsoever. (R. 462.)

Section 159 Civil Code of 1930, provides as follows:

> "The exercise of the *patria potestas* does not authorize the father or the mother to alienate or lay any encumbrance upon the real property of any class whatever * * * without the previous authorization of the District Court wherein the property is situated and the demon-

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([18]) The same evidence test has been considered "the best and most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties, and it has even been designated as infallible." 30 Ame. Jur. 981, Sec. 174.

See also: *Encarnacion* v. *Maeso*, 48 P.R.R. 468.

Restatement of Law, Judgments, 248 Sec. 61.

([19]) Restatement of Law, Judgments, 304 Sec. 68.

stration of the necessity and utility of the alienation or encumbrance and in accordance with the provisions of the law relative to special legal proceedings."

Section 80, Law of Special Legal Proceedings (Sec. 614 Code Civil Procedure of 1933), provides as follows:

"In all cases where, according to the provisions of the Civil Code, the parents or the tutors of a minor or incapacitated person, shall be in need of judicial authority to do anything relative to the keeping of said minor or incapacitated person or of his property, a petition shall be filed with the District Court of competent jurisdiction, setting forth under oath the following particulars:

1. . . .

2. . . .

3. . . .

4. The necessity or utility for the minor or incapacitated person of the act petitioned for."

Section 81, Law Special Proceedings (Sec. 615 of Code Civil Procedure) provides as follows:

"Upon the filing of the petition, if this be in proper form, the court shall fix the date for the examination of the proof relative to the facts alleged . . . with the attendance of the district attorney whose duty shall be to protect the rights of the minor or incapacitated person."

"The documentary proof shall comprise the demonstration of the *patria potestas* or the tutorship and if the authorization should apply to real estate, then the title of ownership and the assessment of the property for the purpose of taxation, if subject to tax, shall also be included."

. . . . .

"The proof having been examined, the judge shall grant or deny the authorization asked for in conformity with the result of the proof adduced, his decision being subject to appeal to the Supreme Court of Puerto Rico either by the petitioner or the district attorney."

The act of the mother of the minor in consenting to the judgment was clearly an act of alienation which needed judicial authority because the consent to the judgment involved the waiver by the minor of rights which were worth many thousand dollars (R. 487) in exchange for his being relieved of the obligation of paying the encumbrance on his share in the Belvedere Farm.

Lompre v. *Diaz,* 237 U.S. 512 (Syl.):

"Under the laws of Puerto Rico a widow and guardian *ad litem* had no authority to give the property of the minor child in payment of a debt of a deceased father in private sale and there was no authority in any judge to approve such a voluntary partition as was involved in this action.

"A disposition of a minor's property by private sale in Puerto Rico unauthorized by the local law, even if approved by a judge, is void, and the minor, on coming of age, may sue in ejectment, under the provisions of the Civil Code, then in force and applicable in this case, without first seeking rescission of the partition." ([20])

([20]) See also:

Burset v. *Registrar,* 49 P.R.R. 47.
Cruz v. *Central Pasto Viejo,* 44 P.R.R. 354.
Mercado v. *Registrar,* 41 P.R.R. 521.
Millan v. *Registrar,* 41 P.R.R. 98.
Costa v. *Piazza,* 51 P.R.R. 667.
Rodriguez v. *Cortes,* 51 P.R.R. 587; 588.
Ex Parte Guzman, 32 P.R.R. 428; 431.

From the record it appears that although there was a hearing before judgment, at said hearing no evidence was presented or admitted; the District Attorney was not present nor notified and that the Court only took into consideration the oral argument and the sworn motion whereby the mother of the minor consented to the judgment ([21]).

Having failed to present evidence of the necessity or utility to the minor of the alienation of his share or interest in Belvedere Estate in consideration for his being relieved of his obligation to pay his share in the encumbrance on said farm, the judgment entered in Case No. 10416 is null and void ([22]).

2. Appellants contend that while it is true that for the alienation of minor's property it is necessary to comply with the provisions of Sections 614 and 615 of the Code of Civil Procedure, in case of compromise of a minor's claim or right it is only necessary to obtain the subsequent approval by the Court of the compromise agreement. (Brief, 25, 26.)

While it is true that the difference between alienation and compromise is that in the former, judicial authority is a prior requisite, while in the latter, the judicial approval may be given after the compromise agreement has been entered, there is no other substantial distinction, for in case of compromise the minor as a matter of fact is releasing

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([21]) A petition alone, although verified, is not sufficient.
Gonzalez v. *Roig*, 31 P.R.R. 32; 35.
Lokpez v. *Fernandez*, 61 P.R.R. 503; 534.

The minor is not estopped from attacking the insufficiency of the evidence submitted.

F. Zayas S. en C. v. *Torres*, 51 P.R.R. 772; 779.

([22]) A judgment is void if there is a failure to comply with such requirements as are necessary for the exercise of power by the court.
Restatement of Law, Judgments, Sec. 8 and Sec. 68, p. 295.
Lokpez v. *Fernandez*, 61 P.R.R. 503; 531.
Lompre v. *Diaz*, 237 U.S. 512 (Syl.).

or giving away some right in order to settle, and this in fact constitutes an alienation.

In Case No. 10416, as our local Supreme Court held, the consent to the entry of the judgment involved the waiver by the minor of rights which were worth many thousand dollars (R. 487). This in fact constitutes an alienation of his property, which needed judicial approval after full demonstration by competent evidence, of the necessity and utility for said minor to surrender such valuable rights ([23]) in consideration of his being relieved from paying his proportional share in the encumbrance on the Belvedere Estate.

3. Although appellants have failed to cite one single case in support of their contention that in compromise mere judicial approval is sufficient we respectfully submit that the case of *Burset* v. *Registrar*, 49 P.R.R. 47 is directly in point against said contention.

Said case was one for partition of real estate in which a minor had an interest. After the Court entered judgment declaring the property to be indivisible and ordering the sale at public auction for the minimum price of $3,000, the mother of the minor appeared before the Court and stated that all parties had stipulated and agreed to sell the property to one of the co-owners for the price of $2,700 "as all parties have agreed that the sum of $3,000 was somewhat high", and requested "that the court approve said stipulation as it involved the rights of a minor and that the judgment serve as judicial authorization for the sale." The District Court authorized the sale requested, fixing the value of the property at $2,700 and ordered that the judgment served also as judicial authorization for the sale by the mother on behalf of the minor. The deed of sale was duly executed but

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([23]) In Case No. 10416 no documentary evidence was presented showing the existence of the *patria potestas* in the mother of the minor. This also makes the judgment in said case null and void. *Lokpez* v. *Fernandez*, 61 P.R.R. 503; 535.

was refused recording. The local Supreme Court held that as the compromise involved "a complete alienation of the entire interest held by the minor in the property" (p. 50) and not a partition of common property, the legal requirements of Sections 80, 81 and 82 of the Law of Special Legal Proceedings (Sec. 614; 615 and 616 of Code of Civil Procedure) should have been complied with, and confirmed the Registrar's refusal to record the deed.

4. Appellants also contend that a judicial inquiry was really made by the Court in Case No. 10416 before entering the judgment, but as appears from the record (R. 462) the only thing taken into consideration by the court at the hearing was the "sworn motion" whereby the mother of the minor consented to the judgment prayed for and the verification of said motion alone was not sufficient demonstration of the necessity and utility to the minor. *Gonzalez* v. *Roig*, 31 P.R.R. 32; 35.

Point III.

The Supreme Court of Puerto Rico was Right in Rejecting the Plea that the Judgment in Case No. 783 is Res Judicata in the Present Case.

Bearing in mind the elemental principles of the theories of *res judicata* and estoppel by judgment, stated in "Point I" herein, let us now analyze the judgment in Case No. 783 in order to determine if the cause of action in said case is the same as the cause of action in the present case; if the judgment is on the merits, and what essential matters were actually litigated and determined.

A. *The Cause of Action in Case No. 783 is Different to the Cause of Action in the Present Case.*

1. The action in Case No. 783 was for the recovery (revendication) of the share in the Belvedere Estate which be-

longed to the plaintiffs' predecessor, Ramiro Vidal and for *mesne* profits (R. 303); while the action in the present case is for the final liquidation of the dissolved partnership "Monagas & Vidal" (24).

In a revendication action the essential allegations are: (1) the description of the real estate or interest therein claimed; (2) the title of the plaintiff, and (3) the adverse possession of defendant, while in an action for the liquidation of a partnership the essential allegations are: (1) the constitution of the partnership; (2) its dissolution, (in the present case by the expiration of its term); (3) partnership assets and liabilities at the time of dissolution; (4) the refusal of the partners defendants to liquidate the partnership, to partition and to adjudicate the partnership's properties.

While it is true that the complaint in Case No. 783 contained many other allegations of facts, said allegations were not only not essential, to the cause of action, but were improper allegations of possible anticipatory defenses. For example: the allegation pertaining to the nullity of the judgment in Case No. 10416. This allegation was completely unnecessary because said judgment, as hereinbefore sustained, was null, void and non-existing and its prior declaration to that effect was not necessary. *Lompre* v. *Diaz* (*supra*).

2. The action in Case No. 783 was an action *in rem* for the recovery of an interest in real estate, while the action in the present case is an action *in personam* for the liquidation of a dissolved partnership.

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(24) Counsel for the Appellants admitted that the action in Case No. 783 is a revendicatory action (R. 345; 346), and the District Court reached the same conclusion (R. 347). Counsel also admitted that the present suit is for the liquidation of a partnership (R. 88).

3. The contention of Appellants that both cases involve the same causes of action (Brief 38) because the present case is a "different means to reach the same result", citing *Calaf* v. *Calaf*, 58 L. Ed. 645, is untenable.

In the *Calaf* case (*supra*), the object of the first case was the recognition of the plaintiff therein as natural child (Filiation) and of his right to inherit 1/2 of the estate left by his father (See *Calaf* v. *Calaf*, 17 P.R.R. 185, 204) and the object of the second case was to nullify his father's will and for the distribution of the inheritance intestate among the heirs. As was very logically concluded by our local Supreme Court and by the National Supreme Court, the end and object of both suits was to share in the inheritance; it was in fact a "different means to reach the same result". *Calaf* v. *Calaf*, 232 U.S. 371; 373.

Can the same be said of the present case? Of course not. The end and object of the suit filed in Case No. 783 was to recover 1/3 interest in the Belvedere Estate which was claimed by plaintiff as heir of Ramiro Vidal. As is pointed out by the Court below (R. 483) the action was purely one of revendication and precisely on that ground was it dismissed. Plaintiff did not then have any right to recover 1/3 of the Belvedere Estate. Plaintiff, at the time of the filing of the complaint in Case No. 783, was a co-owner of the Belvedere Farm ([25]), but he did not have a right to recover 1/3 of the Belvedere Estate because at no time has his share in said Farm been determined and its determination depends exclusively on the final liquidation of the part-

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([25]) On dissolution of a civil partnership, title to the properties of the partnership vest in the partners jointly and undividedly, but not in the proportion of their interest in the partnership as was erroneously stated in our "Motion to Dismiss" the appeal of this case. *Chardon* v. *Laffaye*, 43 P.R.R. 623; (Same Case) 46 P.R.R. 890; *Miramar Realty Co.* v. *Registrar*, 44 P.R.R. 808; 811.

nership, ([26]) after payment of all partnership debts and final partition, division and adjudication of the net assets of the partnership, which is the object of the present suit.

4. That the end and object of the present case is different from that in Case No. 783 is also clear from the fact that when the partnership was dissolved it was the owner of not only the entire Belvedere Farm but also of the other personal property (R. 191; 207) and had debts to pay, and crop loan contracts to liquidate (R. 207). Plaintiff certainly has a perfect right to know what became of all the assets of the partnership; how the crop loan contracts liquidated; and to receive in money or otherwise, his share in what remains after payment of all the liabilities of the partnership, and in no previous judgment is there the slightest determination or adjudication in this respect.

5. It has been sustained that "the best and most accurate test" to determine if the second action is for the same cause of action as the first, is whether the same evidence would sustain both actions. 30 Am. Jur. 918, Sec. 174. Applying this test in the present case the obvious result will be that the evidence to sustain the action of revendication in Case No. 783 necessarily will have to be completely different from the evidence necessary to sustain the action for the liquidation of the partnership in the present case. In the former, (revendication) the description of the share or interest in the Belvedere Farm; proof of plaintiff's title to the 1/3 interest in Belvedere Farm and proof of defendants' adverse

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([26]) The determination of the partners' undivided share depends exclusively on the liquidation of the partnership's assets, as was held in *Rosaly* v. *Graham*, 16 P.R.R. 156. The fact that in the *Rosaly* case the partnership was mercantile is immaterial because in both mercantile and civil partnerships the liquidation is essential in order to determine the share of each partner, in the partnership's properties. In the case of a civil partnership the adjudication of the undivided interest is a matter of law, while in the case of a mercantile partnership the adjudication is a matter of agreement between the partners of the dissolved partnership.

possession of said farm, is indispensable, while in the present case said evidence would have been completely immaterial. The evidence necessary to obtain a judgment in favor of plaintiff in the present case consists solely of the constitution and dissolution of the partnership; proof of the fact that the partnership was the owner of certain properties on dissolution, and of the refusal of the defendants partners to liquidate the partnership. This evidence certainly would have been unnecessary and immaterial in Case No. 783.

6. The cause of action in Case No. 783 being different to the cause of action in the present case, the theory of *res judicata* does not apply and the judgment in the former case is only conclusive as to essential matters actually litigated and determined, by judgment on the merits. ([27])

B. *The Judgment in Case 783 was not on the Merits.*

1. The judgment in Case No. 783 was a judgment on demurrer. The complaint was dismissed (a) for lack of sufficient facts to constitute a cause of action; (b) for the prescription of the actions of nullity, and (c) for the prescription of the right to recover the share in Belvedere Farm. (R. 349.)

A judgment on demurrer may be or may not be on the merits. It is not on the merits when rendered because of an omission of an essential allegation in the complaint, or of some defect in the pleadings, or for want of jurisdiction or upon some other ground which did not go to the merits of the case. ([28])

(a) Insofar as the judgment on demurrer in Case No. 783 was based on lack of sufficient facts to constitute a cause of

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([27]) See Foot Note 9.

([28]) Restatement of Law, Judgments, 198 Sec. 50.
Durant v. *Essex Co.*, 74 U.S. 107; 109.
Insular Board of Election v. *District Ct.*, 63 P.R.R. 786; 798.
Laloma v. *Fernandez*, 61 P.R.R. 550.

action, said judgment was not on the merits. The allegation which the plaintiff omitted and which the Court in its opinion held necessary and essential to constitute a cause of action was that plaintiff did not offer to restore to Monagas the sum he paid to Beauchamp for the 1/3 interest in Belvedere Estate. (R. 355; 486.)

Another essential allegation on which the plaintiff failed to allege in his complaint in Case No. 783 was that the partnership was liquidated and his share in Belvedere Farm was determined to be 1/3. This allegation, of course, he could not make because untrue at that time and untrue at present. If true, the plaintiff would have had a perfect right to file a new suit alleging said omitted essential facts and the former judgment (in Case No. 783) would not have been a bar to the subsequent suit. ([29])

(b) Insofar as the judgment on demurrer in Case No. 783 was based on the prescription of the actions of nullity, this question of law was one of several questions of law which were determined but were not essential to the judgment. (R. 486.) Said question was so non-essential that as decided by the Supreme Court of the United States of America in *Lompre* v. *Diaz,* 237 U. S. 512, 519, there was no necessity to obtain an annulment of that which was already null, to wit: the previous judgment in Case No. 10416 and the orders in Case No. 6889, which were void and in contemplation of law had no existence whatever.

(c) Insofar as the judgment on demurrer in Case No. 783 was based on the prescription of the right of Vidal to recover the share in Belvedere Farm, which was another of the questions of law which were determined but were non-essential to the judgment because the complaint was lacking the essential allegation that the partnership had been liquidated and that the plaintiff's share in said farm was actually determined to be 1/3 thereof. As said fact is precisely what

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([29]) Restatement of Law, Judgments, 198; 200 Sec. 50.

would have given the plaintiff a right to recover the 1/3 share in Belvedere Farm, it is obvious that if he had no such right, the same could not have prescribed.

2. Conceding, for the purpose of argument only, that Vidal had a right to recover said interest in the Belvedere Farm and has lost it by prescription, in that case the judgment would have been on the merits and a bar only insofar as said right of revendication is concerned, but is not a bar as to his perfect right to have the partnership liquidated and to receive the share in the net capital of the partnership which he inherited from his father. As it is well to recall, when plaintiff's father died (Aug. 17, 1921) the partnership term had not expired and therefore he inherited rights, title and interest in the partnership and not in the Belvedere Farm which was then and until dissolution (June 30, 1924), exclusively owned by the partnership.

3. Conceding also, for the purpose of argument only, that the cause of action in Case No. 783 was identical to the cause of action in the present case, as the appellants contend then under the theory of *res judicata* what essential matter might have been adjudicated and determined by the judgment in said case? The answer necessarily is that if the judgment was not on the merits as above contended, no essential matter was actually litigated and determined and no one could have been litigated and determined.

If on the other hand the judgment in Case No. 783 was on the merits insofar as prescription of the right of Vidal to recover the 1/3 interest in Belvedere Farm, no other essential matter could have been litigated and determined and much less the right to determine the share of Vidal in said farm, in the absence of the essential omitted allegation to the effect that the partnership had been liquidated.

C. *The Res Judicata and Estoppel by Judgment Theories are Matters of Local Law.*

Before closing the arguments on this point we want to call the attention to the fact that the theories of *res judicata* and of estoppel by judgment are matters of local law and as such each State and Territory has the right to adopt its own interpretation, in conformity with what might be the majority rule, the minority rule or its exclusive rule. Said interpretation will be recognized as good local law unless it is shown to be "inescapably wrong" or "patently erroneous". (*Sancho Bonet* v. *Texas Co.*, 308 U.S. 463.)

Far from being such, the decision on this point is clearly correct and more so if this Honorable Court takes into consideration that our theory of *res judicata* is incorporated in our Civil Code which comes from Spain, and differs from American and English statutory and common law in that while in the latter a substantial identity of matter, causes of action and parties is only required, our Code requires "the most perfect identity" between matter, causes of actions and parties.

Section 1204 Civil Code 1930:

> "In order that the presumption of the *res judicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such.
>
> In questions relating to the civil status of persons, and in those regarding the validity or nullity of testamentary provisions, the presumption of the *res judicata* shall be valid against third persons, even if they should not have litigated.
>
> It is understood that there is identity of persons whenever the litigants of the second suit are legal rep-

resentatives of those who litigated in the preceding suit, or when they are jointly bound with them or by the relations established by the indivisibility of presentations among those having a right to demand them, or the obligations to satisfy the same."

See also: *Municipality of Hatillo* v. *Rios,* 61 P.R.R. 98; *Melendez* v. *Cividanes,* 63 P.R.R. 4; 11. ([30]).

Point IV.

Appellants were not Deprived of Due Process.

It is Appellants' contention that they were deprived of due process because the local Supreme Court made a wholly unexpected finding on the misrepresentations made by co-appellant Monagas to Vidal's widow, based on testimony to which objections had been sustained by the trial court.

The finding to which Appellants refer appears in the "chronological summary of the facts established by the evidence" made by the Supreme Court of Puerto Rico at the beginning of its opinion (R. 478; 479). After referring to the constitution of the partnership; to the procedure in Case No. 6889; to the filing of the complaint in Case No. 10416 and to the consent of Vidal's widow to the judgment in said case, the Supreme Court stated (R. 479):

> "Vidal's widow consented in writing to judgment for plaintiffs. As she now explains (without being contradicted by Monagas), she signed the written consent at the request of Juan Monagas, while confined in a clinic, and relying on his false representations regarding the contents and effect of the document."

([30]) The opinion in *Melendez* v. *Cividanes* case was written in Spanish and the phrase "la mas perfecta identidad" should have been translated "the most perfect identity" and not "a substantial identity".

After the above quotation, the Supreme Court proceeded with the statement of the facts in their chronological order.

Being aware of the "inescapably wrong" rule of this Honorable Court (Rule 39 (b)), a supreme effort is thus made in Appellants' brief (Point IV pp. 44-53) to raise a Federal question, but in the raising of the same, two false premises were made, in order to argue said point, to wit:

1. That said finding was based on testimony objected to and excluded by the trial court, and

2. That such finding was the one upon which the judgment in the present case was entered.

A. *The Finding was Based on Testimony Admitted Without Objections*

As appears from the transcript of the testimony of Vidal's widow (R. 211-214) she testified without objection that on May 16, 1924 she was in Dr. Perea's clinic by reason of an operation performed on her; that co-appellant Juan Monagas came to the clinic, several times, to see her and in his last visit Monagas and she agreed that he would prepare a document whereby her son (Neftali) was to receive his share in the partnership when he became of age in the same way as the children of Jose A. Monagas (the other deceased copartner (R. 211).

After such a statement, attorney for Monagas made his first objection, to wit:

> "Attorney Sabater: I object, because if there is any document, let it be offered. It would be the best evidence.
>
> "Attorney Alemany Sosa: We are now going to offer it; but we are discussing how the agreement regarding the document was made. Those are the preliminary steps of the contract.
>
> "Attorney Sabater: All right (R. 212).

Having tacitly withdrawn his objection, Vidal's widow proceeded to testify that she accepted Monagas' proposition; that Monagas brought the document, which she signed at the clinic without reading it.

When she was asked what the agreement, attorney for Monagas made his second objection, to wit:

> "Attorney Sabater: I object. The best evidence would be the document. It being a document subscribed by her and she acknowledges her signature, the document is the best evidence. The documents speaks for itself.
>
> "Attorney Alemany Sosa: We are asking her to explan what did the document contain.
>
> "Honorable Judge: The question is allowed.
>
> "Attorney Sabater: With our exception." (R. 212)

Then Vidal's widow proceeded to testify that she did not read the document; that the document was to arrange her son's share in the partnership of "Monagas & Vidal"; so that he would receive the same when he became of age; that when Monagas brought the document no other person was present, except possibly a nurse; that she signed the document without reading it, under the impression that it was what they had agreed; that what appeared in the document was not what they had agreed (R. 213).

When she was asked if she authorized attorney Saliva to represent her in the document and after she answered in the negative, remarking that she did not know him, attorney for Monagas made his third and last objection.

> "Attorney Sabater: I object. Are we going to commence an action for nullity?
>
> "Honorable Judge: Ruling on the question, the Court considers that as a matter of fact the witness already testified that this document was signed as stated by her, at Dr. Perea's clinic at a time when there was no other person at that place. Relying on the testimony of the

witness, the Court considers the question is immaterial. From this point of view the objection is sustained.

"Attorney Alemany Sosa: Exception. Then we offer the document in evidence.

"Attorney Sabater: No objection.

"Honorable Court: It is admitted." (R. 213)

As it clearly appears from the foregoing, the finding of the local Supreme Court as to Monagas misrepresentation regarding the contents and effect of the document was based on the admitted testimony of the widow, not objected to by any one of the Appellants herein.

The first and second objections were clearly to the oral testimony of the contents of the document, the document being the best evidence, and the third and last objection was clearly to the "question" as to whether Vidal's widow authorized attorney Saliva to represent her.

The trial ourt's ruling considering said "question" immaterial was correct, because it made no difference whether she did, or she did not, authorize attorney Saliva to represent her in said document. (*Sic*)

B. *The Finding was Immaterial to the Judgment in the Present Case.*

1. As appears from the prayer of the complaint and from the complaint itself (R. 75-79) the object of the present case is the liquidation of the partnership and the division and adjudication of the partnership's properties and of its rents and profits since dissolution; therefore, what difference would it make whether Monagas made any misrepresentation to Vidal's wife? With or without said misrepresentation the Appellee had a perfect right to obtain the judgment prayed for, therefore, said finding was neither essential nor necessary to the judgment.

2. Conceding, for the purpose of argument only, that the local Supreme Court erred in making such a finding, the judgment will nevertheless stand on the finding that the

judgment in Case No. 10416 is null and void as shown in the argument on Point II, Sub. B. (*supra*).

3. The finding as to Monagas' misrepresentation is completely irrelevant because, as stated in Appellants' brief (p. 45) the amended complaint herein does not charge the Appellants with any fraud or fraudulent conduct. Said finding was not even necessary in an action for the revendication of the interest in the Belvedere Farm inasmuch as Vidal was under no obligation to proceed first to annul the judgment in Case No. 10416 in order to have a right to revendicate said interest. *Lompre* v. *Diaz* (*supra*).

4. The judgment herein having been decided on other grounds, the findings as to Monagas misrepresentation is completely academic and did not deprive Appellants of due process.

Point V.

Beauchamp's Heirs were not Indispensable Parties Defendant in the Present Case.

It is Appellants' contention that the court below set aside the deed of sale from Beauchamp to Monagas and annulled the execution sale without the presence of Beauchamp, or his heirs who are indispensable parties in the present case (Brief 54).

Here too, Appellants make two false premises in order to argue the point, to wit: (a) that the lower Court set aside the deed of sale from Beauchamp to Monagas, and (b) that said Court annulled the execution sale in Case No. 6889.

Nowhere in the complaint filed in this case, is there the slightest allegation with reference to the deed of sale from Beauchamp to Monagas or to the execution sale in Case No. 6889.

The judgment entered by the lower Court, which was affirmed by our local Supreme Court (R. 494), only orders

the liquidation of the partnership and provides for the appointment of a commissioner, should the partners or their successors in interest fail to agree to carry out the liquidation.

Nowhere in said judgment or in the judgment of the local Supreme Court is there any decree or order setting aside any deed or annulling any execution sale.

As the object of this suit was to liquidate the partnership, under the most elemental rule of procedure the only proper defendants are the partners, if living, otherwise their heirs, and Beauchamp was neither a partner nor an heir of any one of the partners.

This being an action for the liquidation of the partnership, there was absolutely no necessity to pass upon the validity of the execution sale in Case No. 6889 or upon the validity and effect of the deed of transfer from Beauchamp to Monagas and it was only with reference to the application of the theory of *res judicata* or of estoppel by judgment, that reference was made to the illegality of said execution sale and to the effect of said deed, in the opinion of our local Supreme Court (R. 489).

Appellants also contend that because of the fact that our local Supreme Court in Case No. 783 dismissed the appeal (60 P.R.R. 763) on the ground that the heirs of Beauchamp were necessary parties in said suit, (Brief 54) they are also necessary parties in the present suit. But said argument is a *non-sequitur*. They were necessary parties in Case No. 783 because that was a suit in which it was sought to annul and set aside the execution sale and the deeds of sale executed by the Marshal to Beauchamp and by the latter to Monagas, (60 P.R.R. 763; 765) as a preliminary to the action of revendication therein prayed for. The plaintiff in said case proceeded under the theory that the execution sale and the aforementioned deeds were not void but voidable and

being so, it was impossible to obtain the annulment without the joinder, as parties defendant, of all persons who participated in the same.

This case being exclusively for the liquidation of the partnership, Beauchamp's heirs are neither necessary nor interested parties herein, because their rights, if any, could not be in any way affected by the judgment ordering the liquidation of the partnership.

Point VI.

The Court Below was Correct in Not Holding that Co-appellant Juan A. Monagas Acquired Title to Vidal's Share in Belvedere Farm by Adverse Possession.

The object of the present case being exclusively for the liquidation of the partnership, it was completely academic to decide whether Monagas acquired title by prescription to Vidal's share in the Belvedere Farm. That would have been a proper issue in Case No. 783, and as argued in Point III, 7 (c), the adverse decision in said case was not on the merits because nowhere in the complaint it was alleged the date on which the partnership was liquidated in order to justify the conclusion that the prescriptive term had elapsed.

The appellants' contention that the defense of prescription was set up in their answer (Brief 58) is absurd. How can the prescription of a right to revendicate an interest in real estate be a defense to an action for the liquidation of a partnership?

This matter was not in issue in the present case nor could it be, for even if Vidal's heirs had lost by prescription their right to revendicate their interest in Belvedere Farm, which we emphatically deny, Appellee, as heir of Ramiro Vidal, certainly has the right to know what became of all the assets of the partnership and to receive, in money or otherwise, their share in what remains after payment of all the liabilities of the partnership, and the only way to exert said right

is through the judicial liquidation of said partnership, prayed for in the complaint filed herein.

Said right has not prescribed nor has the Appellants alleged prescription of the same, neither as a defense in their answer, nor as an error in their brief.

CONCLUSION.

There is no Federal question involved in the present case and the local Supreme Court was inescapably correct in the application of the theories of *res judicata* and estoppel by judgment, and in the interpretation and application of the local laws, therefore the judgment appealed from should be affirmed.

Respectfully submitted,

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Copy of this brief was served by registered mail on Jose A. Poventud, Esq., Box 266, Ponce, Puerto Rico, as attorney for the Appellants, this twenty-fourth day of March, 1948.

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